



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590

JUL 3 2001

Anne N. Christenson, Esq.
Law Office of Fennemore Craig
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913

Reference No. 01-0135

Dear Ms. Christenson:

This is in response to your May 28, 2001 letter and several telephone conversations with members of my staff concerning a product your client tested for corrosiveness using the methods prescribed in 49 CFR 173.137 and exemption DOT-E 10904. You stated the four samples tested according to § 173.137 classified the material either as non-hazardous or as Class 8 (corrosive), Packing Group II. The four samples tested according to DOT-E 10904 all classified the material as Class 8, Packing Group II. You asked which test result your client should use to classify the material.

If several tests give different results on whether a material is or is not a hazardous material, the most conservative test result should be used to establish its classification under the Hazardous Material Regulations (49 CFR Parts 171-180). For your client, based on the information you provided, this would mean classifying the material as Class 8, Packing Group II.

I hope this satisfies your request.

Sincerely,

Hattie L. Mitchell
Chief, Regulatory Review and Reinvention
Office of Hazardous Materials Standards

LAW OFFICES
FENNEMORE CRAIG
A PROFESSIONAL CORPORATION

ANNE N. CHRISTENSON

Direct Phone: (602) 916-5478
Direct Fax: (602) 916-5678
achriste@fclaw.com

OFFICES IN:
PHOENIX, TUCSON AND NOGALES
3003 NORTH CENTRAL AVENUE
SUITE 2600
PHOENIX, ARIZONA 85012-2913
PHONE: (602) 916-5000
FAX: (602) 916-5999

May 28, 2001

Mr. Ed Mazzullo, Director
Office of Hazardous Materials Standards
Research and Special Programs Administration
400 Seventh Street, SW
Washington, DC 20590-0001

Re: Request for Written Interpretation

Dear Ed:

I am writing this letter on behalf of a client who ships potentially corrosive hazardous materials. My client had a product tested to determine its corrosivity and degree of danger. Four samples of the product were tested using the testing requirements specified in 49 C.F.R. § 173.137. These test results varied considerably; the results ranged from noncorrosive to a packing group II material. My client then had four samples of the product tested using the methodology in DOT-E 10904 (Fourth Revision). All these test results indicated that the product was a packing group II material. Based on these varying testing results, which packing group do the Hazardous Materials Regulations require my clients to use and why?

Thank you for your assistance with this matter. Please contact me if you have any questions.

Sincerely,

FENNEMORE CRAIG

Anne N. Christenson

Anne N. Christenson

PHX/ACHRISTE/1186141.1/53078.179

Edmonson
§ 173.137
Packing Group
01-0135



U.S. Department
of Transportation
**Research and
Special Programs
Administration**

400 Seventh St., S.W.
Washington, D.C. 20590
DEC 12 2000

DOT-E 10904
(FOURTH REVISION)

EXPIRATION DATE: October 31, 2002

(FOR RENEWAL, SEE 49 CFR § 107.109)

1. GRANTEE: InVitro International
Irvine, California
2. PURPOSE AND LIMITATION: For the offering of hazardous materials for transportation in commerce, this exemption authorizes the use of a classification test method for the determination of skin corrosivity as an alternative to a procedure specified in the Hazardous Materials Regulations. This exemption provides no relief from any regulations other than as specifically stated.
3. REGULATORY SYSTEM AFFECTED: 49 CFR Parts 106, 107 and 171-180.
4. REGULATIONS FROM WHICH EXEMPTED: The marking requirements of 49 CFR §§ 172.203(a), 172.301(c) and 172.302(b) and (c); §§ 173.136(a) and 173.137 in that the use of a non-animal test method is authorized.
5. BASIS: This exemption is based on the application of InVitro International's dated September 27, 2000, submitted in accordance with § 107.109.
6. HAZARDOUS MATERIALS:

The following types of materials may be tested as specified by this exemption:
 - a. Acids, inorganic and organic.
 - b. Acid derivatives (anhydrides, haloacids, salts etc.), inorganic and organic.
 - c. Acyl halides.
 - d. Alkylamines and polyalkylamines.

DEC 12 2000

Continuation of DOT-E 10904 (4th Rev.)

Page 2

- e. Bases, inorganic and organic.
- f. Chlorosilanes.
- g. Metal halides and oxyhalides.

7. SAFETY CONTROL MEASURES:

a. As an alternative to the procedure specified in § 173.136(a), the corrosivity of a material described in Paragraph 6 above may be determined in accordance with the test method specified in Paragraphs 4.4A through 4.4E of InVitro International's application dated September 28, 1992, as amended.

b. For materials that are determined to be corrosive, packing groups must be assigned according to Paragraph 4.4C of the application, as amended as described in paragraph 5. above.

8. SPECIAL PROVISIONS:

a. This exemption authorizes the use of an alternative test method for the determination of skin corrosivity by any person or class of persons, in addition to the holder of this exemption, subject to the terms specified herein. However, no person may apply the test method authorized by this exemption unless that person maintains a current copy of this exemption and the test method identified in Paragraph 7 above at each facility where the tests are performed for the purpose of determining the hazard class and packing group of a material for its transportation in commerce.

b. A current copy of this exemption must be retained by each person initially offering a hazardous material for transportation under this exemption.

c. Packages containing corrosive materials, classed and assigned packing groups as authorized by this exemption, may be offered and reoffered for transportation and transported in the same manner as required for corrosive materials classed according to § 173.136(a).

d. The marking requirements of 49 CFR, §§ 172.203(a), 172.301(c) and 172.302(b) and (c) are waived unless another exemption is involved requiring the display of an exemption number.

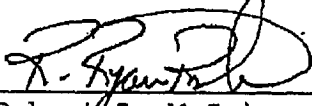
9. MODES OF TRANSPORTATION AUTHORIZED: Motor vehicle, rail freight, cargo vessel, cargo aircraft only, passenger-carrying aircraft.
10. MODAL REQUIREMENTS: None as a condition of this exemption.
11. COMPLIANCE: Failure by a person to comply with any of the following may result in suspension or revocation of this exemption and penalties prescribed by the Federal hazardous materials transportation law 49 U.S.C. 5101 et seq.:
- o All terms and conditions prescribed in this exemption.
 - o Registration required by § 107.601 et seq., when appropriate.

Each "Hazmat employee", as defined in § 171.8 who performs a function subject to this exemption must receive training on the requirements and conditions of this exemption in addition to the training required by §§ 172.700 through 172.704.

No person may use or apply this exemption when it has expired or is otherwise no longer in effect.

12. REPORTING REQUIREMENTS: The carrier is required to report any incident involving loss of packaging contents or packaging failure to the Associate Administrator for Hazardous Materials Safety (AAHMS) as soon as practicable. (Sections 171.15 and 171.16 apply to any activity undertaken under the authority of this exemption.) In addition, the holder(s) of this exemption must inform the AAHMS, in writing, of any incident involving the package and shipments made under the terms of this exemption.

Issued in Washington, D.C.:


for Robert A. McGuire
Associate Administrator
for Hazardous Materials Safety

DEC 12 2000
(DATE)

DEC 12 2000

Continuation of DOT-E 10904 (4th Rev.)

Page 4

Address all inquiries to: Associate Administrator for
Hazardous Materials Safety, Research and Special Programs
Administration, Department of Transportation, Washington, D.C.
20590-0001.

Attention: DHM-31.

The original of this exemption is on file at the above office.
Photo reproductions and legible reductions of this exemption
are permitted. Any alteration of this exemption is
prohibited.

PO: GEC/sdc

Interpretation Letters

Requester Anne N. Christenson

Date Received: 6/1/2001

Company Law Offices of Fennemore Craig

Tracking Number: 01-0135

Phone 602-916-5478

Revision Date: 6/1/2001

Date Assigned 6/1/2001

Date of Letter 5/28/2001

Staff Edmonson

First Draft Due: 6/22/2001

Section 173.137

First Draft Date:

Subject Packing Group

Concurrence

Status

Status Date

Sign Date

Signor

HBP ☐

Copy to Docket ☐

Copy to DHM-60 ☐

Comment

6/6/01 J. McIntyre says she answered this question for Anne by phone saying George Cushmac said go with the most conservative test result. Anne faxed the letter to J. McIntyre for response

6/16/01 J. McIntyre says Anne called her & the client will not provide test results. Anne said the only question is when test results vary can her client use the most conservative result as Ge. Cushmac paid.